

KLAMATH BASIN EMERGENCY OPERATION AND
MAINTENANCE REFUND ACT OF 2001

NOVEMBER 13, 2001.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. HANSEN, from the Committee on Resources,
submitted the following

R E P O R T

[To accompany H.R. 2828]

The Committee on Resources, to whom was referred the bill (H.R. 2828) to authorize refunds of amounts collected from Klamath Project irrigation and drainage districts for operation and maintenance of the Project's transferred and reserved works for water year 2001, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Klamath Basin Emergency Operation and Maintenance Refund Act of 2001".

SEC. 2. QUALIFIED KLAMATH PROJECT ENTITY DEFINED.

In this Act, the term "qualified Klamath Project entity" means an entity that—

- (1) has executed a water supply contract with the United States for water from the Upper Klamath Lake and the Klamath River of the Klamath Project pursuant to the reclamation laws, including the Act of June 17, 1902 (32 Stat. 388), and Acts amendatory thereof or supplementary thereto;
- (2) distributes water received under the contract;
- (3) received a severely limited irrigation supply from the Upper Klamath Lake and the Klamath River based on the Bureau of Reclamation 2001 annual operations plan dated April 6, 2001; and
- (4) was not reimbursed for its operation and maintenance expenses for 2001 pursuant to State law.

SEC. 3. REFUND AND WAIVER OF ASSESSMENTS AND CHARGES FOR OPERATION AND MAINTENANCE OF KLAMATH RECLAMATION PROJECT.

(a) IN GENERAL.—The Secretary of the Interior is authorized to pay to each qualified Klamath Project entity an amount equal to the amount assessed or charged to members of the qualified Klamath Project entity, or to other persons receiving water or drainage service from such an entity, for operation and maintenance of Klamath Project transferred and reserved works for 2001.

(b) **CONDITIONS.**—Payment under this section may be made to a qualified Klamath Project entity only after the entity has—

(1) provided to the Secretary documentation satisfactory to the Bureau of Reclamation, demonstrating the total amount assessed or charged to members of the entity or to persons receiving service from the entity; and

(2) executed a binding agreement under which the funds paid to the entity under this section shall be distributed to each member of the entity or persons receiving service from the entity in an amount equal to the amount collected by the entity from the member or person for operation and maintenance for 2001.

(c) **WAIVER OF REMAINING AND ADDITIONAL CHARGES.**—The Secretary may waive any requirement that a qualified Klamath Project entity pay remaining or additional charges for operation and maintenance of Klamath Project reserved works for 2001.

(d) **PAYMENTS AND WAIVERS FOR INDIVIDUALS.**—The Secretary—

(1) may pay, to any individual within the Klamath Project who holds a contract entered into pursuant to the Act of February 21, 1911 (36 Stat. 925; 43 U.S.C. 523–525), popularly known as the “Warren Act”, and who is not within a district that receives a payment pursuant to subsection (a) and a waiver under subsection (c), an amount equal to the amount collected from such individual for operation and maintenance of Klamath Project reserved works for 2001; and

(2) may forego collection from such individual of charges for operation and maintenance of such works for the remainder of 2001.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

Amounts not paid by a qualified Klamath Project entity to the Bureau of Reclamation for the operation and maintenance of the reserved works for 2001 shall be funded from the appropriations authorized by this Act. Costs incurred by the Bureau of Reclamation in carrying out this Act shall not be reimbursable.

SEC. 5. NO SUPPLEMENTAL OR ADDITIONAL BENEFIT.

Activities under this Act or funded pursuant to this Act shall not be considered a supplemental or additional benefit under the Act of June 17, 1902 (82 Stat. 388), and all Acts amendatory thereof or supplementary thereto.

Amend the title so as to read:

A bill to authorize payments to certain Klamath Project water distribution entities for amounts assessed by the entities for operation and maintenance of the Project’s transferred works for 2001, to authorize refunds to such entities of amounts collected by the Bureau of Reclamation for reserved works for 2001, and for other purposes.

PURPOSE OF THE BILL

The purpose of H.R. 2828 is to authorize refunds of amounts collected from qualified Klamath Project entities or to other persons receiving water or drainage service from such entity for operation and maintenance of the Project’s transferred and reserved works for 2001, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

The U.S. Bureau of Reclamation Klamath Project lies within three counties along the Oregon and California border; Klamath County in southern Oregon, and Modoc and Siskiyou Counties in Northern California. Authorized in 1905 primarily for irrigation, the Klamath Project serves approximately 1,400 farms and provides irrigation water to approximately 220,000 acres in an otherwise arid area.

In 1988, the U.S. Fish and Wildlife Service listed the Shortnose and Lost River sucker fish as “endangered” under the Endangered Species Act (ESA). For the first time in the Klamath Reclamation Project’s history, irrigation deliveries were curtailed at the end of

the 1992 growing season to meet minimum lake levels for these species.

In 1996, the Bureau of Reclamation agreed to meet certain minimum instream flows below the Iron Gate Dam (which controls the level of Klamath Lake) to protect habitat for anadromous fish which are Indian tribal trust resources. In 1997, Southern Oregon and Northern California Coastal Coho salmon were listed under the ESA as “threatened” species. A 1999 biological opinion from the National Marine Fisheries Service concluded that the Klamath Project operations would affect, but not likely jeopardize, coho salmon.

Following a declaration of severe drought for the Klamath Basin in 2001, two new biological opinions from the U.S. Fish and Wildlife Service and the National Marine Fisheries Service were issued on April 5 and April 6, 2001. The opinions stated that the Bureau of Reclamation’s operation of the Klamath Project for the year would jeopardize the continued existence of the endangered sucker fish and threatened coho salmon, and would harm but not jeopardize the continued existence of bald eagles who also rely on Project water. The opinions also called for the minimum elevation in upper Klamath Lake to be raised to 4,140 feet above sea level, with no tolerance for lower elevations in drought years.

On April 6, 2001, the Bureau of Reclamation released the Klamath Project 2001 Operations Plan, stating that based on the requirements of the biological opinions issued under the ESA and the drought conditions, only limited deliveries of Project water would be made for irrigation. Only a small area (Langell Valley and Bonanza) would receive water from Clear Lake and Gerber Reservoirs. Additional minor relief was also provided on July 24, 2001, when, after Congressional pressure, the Department of the Interior announced it would release about 70,000 to 75,000 acre feet of water from upper Klamath Lake to assist farmers in the Klamath Project area.

Despite that water was not delivered to most Klamath Basin farmers, they were still asked to pay this year’s operations and maintenance expenses for the Project. This legislation would repay costs already paid and forgive future operation and maintenance costs in 2001. This is interim and only for 2001.

These payments are limited to a “qualified Klamath Project entity” and only after the entity has:

- (1) Provided to the Secretary documentation satisfactory to the Bureau of Reclamation, demonstrating the total amount assessed or charged to members of the entity or to persons receiving service from the entity; and
- (2) Executed a binding agreement under which the funds paid to the entity under this legislation be distributed to each member or persons receiving service from the entity in an amount equal to the amount assessed and collected by the entity from the member or person for operation and maintenance for 2001.

H.R. 2828 also authorizes the Secretary to waive any requirement that a qualified Klamath Project entity pay remaining or additional charges for operation and maintenance of Klamath Project reserved works for 2001. The bill also allows the Secretary to issue refunds and to waive collections for operation and maintenance.

nance costs from individuals party to a Warren Act contract for water.

COMMITTEE ACTION

H.R. 2828 was introduced on August 2, 2001, by Congressman Greg Walden (R-OR). The bill was referred to the Committee on Resources, and within the Committee to the Subcommittee on Water and Power. On November 7, 2001, the Full Resources Committee met to consider the bill. The Subcommittee on Water and Power was discharged from further consideration of the bill by unanimous consent. Mr. Walden offered an amendment in the nature of a substitute to make conforming changes requested by the Administration clarifying who is eligible to receive refunds and to limit refunds only to those who have not received substantial amounts of water or have not been reimbursed under State law. The amendment was adopted by voice vote. The bill, as amended, was then ordered favorably reported to the House of Representatives by voice vote.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. *Cost of Legislation.*—Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. The Committee believes that enactment of this bill will have an insignificant impact on the budget of the United States.

2. *Congressional Budget Act.*—As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, credit authority, or an increase or decrease in tax expenditures. The bill will authorize the Secretary of the Interior to repay 2001 operation and maintenance costs of certain Klamath Project entities who have not received water from the Project and allow those entities to forego paying any future operation and maintenance costs for the remainder of 2001. The Committee believes the combination of refunds and foregone payments will equal less than \$4 million in 2001.

3. *General Performance Goals and Objectives.*—As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to authorize payments to certain Klamath Project water distribution entities for amounts assessed by the entities for operation and maintenance of the Project's transferred works for 2001, and to authorize refunds to such entities of amounts collected by the Bureau of Reclamation for reserved works for 2001.

4. *Congressional Budget Office Cost Estimate*.—Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has requested but not received a cost estimate for this bill from the Director of the Congressional Budget Office.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

